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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/070,348	02/28/2002	Amanda Sara Hewett	602-1562	7081

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Lee Mann Smith McWilliams  
Sweeney & Ohlson  
PO Box 2786  
Chicago, IL 60690-2786

EXAMINER
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GRILES, BETHANY L

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 06/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/070,348

Applicant(s)

HEWETT ET AL.

Examiner

Bethany L. Griles

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WU

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 22 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 21-39 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 21-28 and 35-39 is/are rejected.
- 7) ☐ Claim(s) 29-34 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments with respect to claim 21-39 have been considered but are moot in view of the new ground(s) of rejection.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

3. Claims 21, 22, 24-28, 37-39 are rejected under 35 U.S.C. 102(e) as being anticipated by Waters et al. (US6357394).
4. Regarding claim 21, Waters et al. disclose a cage (compartment 102) for use by a caged rodent (col 2, lines 34-35) comprising a material which is transparent to a human observer but is perceived as being substantially darkened or opaque by the caged rodent (col 4, lines 45-53-wherein it is disclosed that front and back of the hide

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box are preferably a dark red, transparent plastic, such as acrylic, to provide a measure of isolation to the animal within the hid box while permitting a keeper to check on the condition and behaviour of the animal). In other words, the dark red plastic material of the hide box must be implicitly perceived by the animal as "darkened or opaque", otherwise, the animal would not retreat into the box to seek isolation or to hide from observation.

5. Regarding claim 22, Waters et al. disclose that the cage is used to house a rodent, which by definition is a mammal of the order of Rodentia, as a mouse, squirrel, rat, or beaver, characterized by large incisors adapted for gnawing or nibbling ((Webster;s II New Riverside University Dictionary 1988), inherently the caged rodent would be a rat or mouse.

6. Regarding claim 23, Waters et al. disclose the item is substantially or entirely formed from a substance which is transparent or translucent to a human observer, but substantially darkened or opaque to the caged animal (col 4, lines 45-53, wherein it is disclosed that the front and back of the hide box are preferably a dark red, transparent plastic, such as acrylic, to provide a measure of isolation to the animal within the hide box while permitting a keeper to check on the condition and behaviour of the animal).

7. Regarding claim 24, Waters et al. disclose that the cage is formed entirely from a synthetic plastics material (col 4, lines 46-50), wherein it is stated that the top, bottom, sides , and back of the compartment 102 is constricted of plastic).

8. Regarding claims 25 and 26, Waters et al. disclose that the cage is constructed from polycarbonate (col 4, lines 28-30) and polycarbonate is resistant to reeated

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autoclaving (note applicant's statement on page 2, 4<sup>th</sup> paragraph of specification, that polycarbonate is resistant to repeated autoclaving.

9. Regarding claims 27 and 28, Waters et al. disclose that the cage is comprised of a red colored material (dark red plastic—col 4, line 50).

10. Regarding claim 35, Waters et al. disclose fixing means to restrict movement of the item within a cage (the cage item is a drawer which slots into place in the bottom of the cage, as illustrated in figure 1).

11. Regarding claims 37-39, Waters et al. disclose a method of making a cage (compartment 102) comprising the step of forming the cage so as to comprise a material which is transparent to a human observer, but is perceived as being substantially darkened or opaque by the caged rodent (col 4, lines 45-53, wherein it is disclosed that the front and back of the hide box are preferably a dark red, transparent plastic, such as acrylic, to provide a measure of isolation to the animal within the hide box while permitting a keeper to check on the condition and behaviour of the animal). When analyzed in light of the immediate disclosure, the dark red plastic material of the hide box must implicitly be perceived by the animal as "darkened or opaque" otherwise, the animal would not retreat into the box to seek isolation or to hide from observation.

***Claim Rejections - 35 USC § 103***

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. Claim 36 is rejected under 35 U.S.C. 103(a) as being unpatentable over Waters et al. in view of Tominaga US5392733.
14. Regarding claim 36, Waters et al. do not disclose at least two entrances.
15. Tominaga discloses at least two entrances 20.
16. It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of Tominaga of at least two entrances to the invention of Waters et al. in order to make the animal accessible to the keeper, and to give an animal in a caged environment an enrichment in the form of multiple entrances and exits to its lair, as would occur in nature.

#### ***Allowable Subject Matter***

17. Claim 29-34 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bethany L. Griles whose telephone number is 703.305.1839. The examiner can normally be reached on Monday through Friday 8:00 am - 4:30 pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 703.308.2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*blg*

blg

Bethany L. Griles  
Examiner  
Art Unit 3643

*Peter M. Poon*

Peter M. Poon  
Supervisory Patent Examiner  
Technology Center 3600

*5/26/04*